

Orientation

For:
New & Prospective Specialized Provider Agencies
Of Community-Based Services

NEBRASKA DEPARTMENT OF HEALTH & HUMAN SERVICES
Helping People Live Better Lives



Overview

This Orientation is for prospective and newly certified specialized community-based service provider agencies by the

**Division of Developmental Disabilities
Department of Health and Human Services
State of Nebraska**

Revised September 2016

Division responsibilities

- ▶ The Department of Health and Human Services (DHHS) Division of Developmental Disabilities (DDD) is charged by statute with contracting “for specialized services and shall only contract with specialized programs which meet certification and accreditation requirements.” (Neb. Rev. St. Stat. §83-1217)

Division responsibilities

- ▶ DHHS certifies providers of **agency specialized community-based developmental disabilities services** to provide essential habilitation (training and support) services for Nebraskans with developmental disabilities so they can live, work and more fully participate in the community.

DHHS

- ▶ Six divisions:
 - ▶ Behavioral Health
 - ▶ Children & Family Services
 - ▶ Medicaid & Long Term Care
 - ▶ Public Health
 - ▶ Veterans' Homes
 - ▶ Division of Developmental Disabilities (DDD or DD)

To learn more about the DD Division and other divisions in DHHS and to view organization charts, go to: <http://dhhs.ne.gov/Pages/default.aspx>.

Specialized and Non-Specialized Services

Agency (Specialized) and Individual (Non-Specialized) Services

- ▶ Specialized Services – provided by certified community-based agencies. The agency hires, trains, fires, keeps time sheets, etc.
- ▶ Non-Specialized Services – supports provided by independent providers; people hired by the individual, family or guardian. Examples: job coaches, companions, housekeepers, college students, friends, etc.

Becoming a provider agency

Department of Health & Human Services

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What is needed to become a provider agency?

- ▶ Administrative background
- ▶ Organizational skills and practices to operate a functional business
- ▶ Knowledge, education and/or experience in working with individuals who have developmental disabilities

Specialized services: frequently asked questions (FAQs)

1. What regulations would I have to follow as a provider?
2. How do I become certified as a specialized provider agency?
3. How do individuals choose providers?

What regulations would I have to follow as a provider?

- ▶ Title 404 Nebraska Administrative Code, often referred to as the “404 Regulations”
 - ▶ Title 404 Nebraska Administrative Code (NAC) – Community Based Services for Individuals with Developmental Disabilities

FAQ 1: What regulations would I have to follow as a provider?

- ▶ In addition to 404 Regulations, every provider of services **must follow all applicable local, state, and federal codes, laws and regulations.**
- ▶ Providers are responsible for identifying and following the most current regulations at all levels of the process.

Regulations

The Title 404 NAC regulations include the following chapters:

1. The scope and authority of the Title 404 NAC regulations
2. Definitions pertinent to providing services
3. Eligibility and authorization of funds
4. Core requirements for specialized providers of DD services
5. Individual Support Options (ISO) – residence NOT owned/operated by agency

Regulations (continued)

- 6. Provider Operated/Controlled Community-Based Residential and Day Services
- 7. Reserved for future use
- 8. Respite Services
- 9. Non-Specialized Services
- 10. Children's Waiver Family Services
- 11. Specialized DD Provider Contracting

FAQ 1: Regulations (continued)

- ▶ Additional related State Statutes or Regulations cited/referenced in 404 NAC:
 - ▶ Statutes regarding contracting, certification/accreditation, reimbursement, criminal history and governing board/advisory committee
 - ▶ Federal verification system
 - ▶ Adult Protective Services Act
 - ▶ Statutes relating to reporting abuse and neglect

FAQ 1: Regulations (continued)

- ▶ Clarifying information regarding State Statutes or Regulations cited/referenced in 404 NAC:
 - ▶ 4-003.03 – Local Governing Board or Advisory Committee: The Specialized provider must comply with Neb.Rev. §§ 83-1217 and 83-1218
 - ▶ 83-1217 “(7) The local Governing Board or Advisory Committee must consist of more than one member of each: (a) persons with developmental disabilities, (b) family members or legal guardians of persons with developmental disabilities, and (c) persons who are interested community;”
 - ▶ Note the PLURAL in this citation – you cannot have a Board or Committee consisting of just three members.

FAQ 1: Regulations (continued)

- ▶ Additional related State Statutes or Regulations cited/referenced in 404 NAC:
 - ▶ CDDs or “Centers for the Developmentally Disabled” are living arrangements where four or more individuals with developmental disabilities live together and are governed by NAC 175 Chapter 3
 - ▶ These regulations are monitored by the DHHS Division of Public Health

FAQ 1: Regulations (continued)

- ▶ Additional related State Statutes or Regulations cited/referenced in 404 NAC:
 - ▶ Title 172, Chapter 95 “Administration of Medications by Medication Aides and Medication Staff”
 - ▶ Title 172, Chapter 96 “Medication Aide Registry”
 - ▶ Title 172, Chapter 99 “Provision of Nursing Care”
 - ▶ Title 172, Chapter 101 “Practice of Nursing”
 - ▶ Title 172, Chapter 102 “Practice of Licensed Practical Nurses - Certified”

FAQ 1: Regulations (continued)

Important

- ▶ **To be a Community-Based DD Provider you must be a Medicaid Provider and be thoroughly familiar with Medicaid provider requirements.**
- ▶ **The reason for this: Medicaid Waiver**
 - ▶ See Title 404 NAC 4-003.01 and 471 NAC 2-000
- ▶ **It is required that you get a Medicaid Provider number after becoming provisionally certified.**
- ▶ **Federal regulations (42 CFR 455, Subpart E) require State Medicaid Agencies to conduct specific screening activities prior to the enrollment of providers. Nebraska Medicaid has contracted with Maximus Health Services, Inc. (Maximus) to aid the Division in becoming compliant with these requirements. More information to follow.**

FAQ 1: Regulations (continued)

- ▶ Federal Regulations to review and consider
 - ▶ Clinical Laboratory Improvement Amendments (CLIA) Federal Regulations, part 493
 - ▶ Health Insurance Portability and Accountability Act (HIPAA)
- ▶ If serving children who are state wards, Title 390 “Child Welfare and Juvenile Services”

FAQ 2: How do I become certified as a specialized provider agency?

- ▶ Follow the steps outlined in the NAC 404, Chapter 4 (also described on the following slides)

FAQ 2a: What are the steps?

1. Submit a letter of intent that clearly communicates:
 - ▶ Scope of services you intend to provide as outlined in the 404 Regulations (see next slide for more information)
 - ▶ Location (city/cities) where you will provide the service(s)
 - ▶ Previous experience as a provider or provider agency, and
 - ▶ Other pertinent information
 - ▶ You should submit your letter of intent before attending orientation.

Scope of Services – Service Options (404 NAC 4-002.01)

Defined and Determined by the Waiver

- A. Individual Support Options–Supported Day/Living - See 404 NAC 5
- B. Provider Operated Residential/Day Services - See 404 NAC 6
- C. Licensed Center for Persons with Developmental Disabilities (CDD) - See 175 NAC 3
- D. Respite Services-See 404 NAC 8
- E. Children's Waiver Services – See 404 NAC 10

FAQ 2a: Steps

2. Complete Prospective Provider Orientation
3. Electronically submit a complete 404 NAC application form with your agency's policy and procedure (P&P) manual. All submissions need to be electronic; we do not accept hard copies.
 - ▶ P&P manual **must** provide clear references to specific regulations addressed by the policy section. You are required to use a worksheet (provided) to demonstrate how your policies and procedures meet the rules and regulations. This will be sent with application form.
 - ▶ We are not allowed to consult regarding the content of the policies and procedures.

FAQ 2a: Steps

4. The Department will review your application and P&P to determine if everything is complete and make a decision to:

- ▶ Ask for revisions; or
- ▶ Pass the information to the Contract Coordinator for next steps.

Regurgitation of the rules and regulations is not sufficient!

- ▶ P&P must clearly spell out how you will implement the rules and regulations
 - ▶ Example: How will you report critical incidents?
 - ▶ Example: Not enough to state you have an advisory board; how will the advisory board function – what will they do, what do they address, etc.

Steps

- ▶ The Department cannot consult with you to develop content for your P&P. We are only allowed to review the P&P and determine if it is complete.
- ▶ The Department does not “Approve” or “Reject” P&P’s. If we review a P&P and determine that it is not complete, we will send it back to be revised.
- ▶ If the P&P is complete, DHHS-Public Health will work on the certification process. The Contract Coordinator is notified for next steps.

FAQ 2a: Steps

6. If revisions are required, you can choose to make revisions and resubmit your application and P&P to the Department for review.

- ▶ While there is no official limit on how many attempts you can have to get the P&P accepted, we reserve the right to pause the certification process if an excessive number of reviews have been required.

FAQ 2a: Steps

7. If the Department determines that your application, P&P, service plans to be approved form and P&P worksheet are complete, you will be informed in writing of the decision. Your application will be forwarded to the Contract Coordinator, and you will be required to submit additional documents associated with a pre-contract phase.

FAQ 2a: Steps

8. If your application is found not to be complete, you will be notified in writing.

- ▶ We will inform you of the areas that need to be addressed, but we are not allowed to suggest HOW to address those areas.
- ▶ If a P&P manual is submitted where it is clear very early on that it is not complete, we reserve the right to not review the entire P&P. If this is the case, we will make every effort to inform the applicant of the general issues that were found.

FAQ 2b: How long does it take to become certified?

- ▶ It usually takes several months to become certified as a provider of specialized DD services
- ▶ The time it takes is dependent upon how long it takes your agency to fully complete an application and policies and procedures manual that fully describe **how** your agency and staff will comply with 404 NAC in daily operations

FAQ 2c: Is there start-up funding available?

New provider agencies should not anticipate start-up funding through the State of Nebraska, and plan accordingly.

FAQ 3: How do individuals choose providers?

- ▶ Individuals choose providers from a list provided by the Service Coordinator, or from their own experiences
- ▶ Services are to be person-centered, in accordance with the individual's hopes, dreams and goals and in the location they prefer

Conflict of Interest

Nebraska operates a “conflict-free” philosophy of service provision.

- ▶ This means that at all times, potential conflicts of interest must be prevented, identified and mitigated.
- ▶ It's recommended that conflict of interest screening be included in the P&P
 - ▶ Example: an agency owner should not also be involved in direct care provision
 - ▶ The P&P should address how the agency will identify a conflict of interest, and what will be done to address the conflict of interest

Funding and Placement Process

Funding and Placement Process

- ▶ Eligibility is determined
- ▶ Ability to Pay is determined
- ▶ Date of need is selected
- ▶ Added to the Registry of Needs
- ▶ Individuals receive funding, come off registry

Funding and Placement Process

Funding and Placement Process (Cont.)

- ▶ Maximizing Funding – agreement that individual and/or their family will apply for and accept any Federal Medicaid or other eligible benefits
- ▶ Service Coordinator (SC) is assigned
- ▶ Assessment (ICAP) is completed to determine Individual Budget Amount (IBA)
- ▶ SC meets with individual and their family to discuss service options and discuss possible provider options
- ▶ Referrals are sent to providers, potentially statewide or just to one agency. This referral may be filtered by the individual in several ways – geography, knowledge of program, etc.

Funding and Placement Process

Funding and Placement Process (Cont.)

- ▶ Providers have the responsibility to respond to every referral. The options are to accept or deny the referral.
- ▶ If the provider accepts the referral, a back and forth begins, including possible meet and greet meeting, tours, and trial periods.
- ▶ Once individual chooses an agency, the team will meet
- ▶ **The Department does not pay for room and board. Room and Board is paid by the individual's SSI payment or by the individual, depending on circumstances.**

CMS Rule

The Centers for Medicare and Medicaid Services (CMS) established a new rule that became effective March 17, 2014 and all existing agencies must be in compliance by March 17, 2019. New agencies must comply immediately.

- ▶ This rule states that all home and community-based settings (HCBS) that receive Waiver (Medicaid) funds have to ensure that people live in the community and have opportunities to access their community and receive services in the most integrated settings.

What this means for ALL settings:

- ▶ The setting is selected by the individual from options that include non-disability specific settings and options for privacy in residential settings (i.e. a private room.)

CMS Rule (Cont.)

- ▶ Individuals must have informed choice of providers, services and settings and that choice must be documented by a person-centered plan.
- ▶ People have optimal opportunity for independence in making life choices without regimented daily activities, can access their physical environment and may interact with family and friends, just as people who are not receiving home and community based services do.

CMS Rule (Cont.)

What this means for residential services (not a complete list):

- ▶ Each individual must have the same responsibilities and protections from eviction that tenants have under state or local landlord/tenant laws. If such laws do not apply, a lease or other legally binding agreement is in place to provide those protections.
- ▶ Each individual must have privacy in their sleeping or living unit, with a lock and key controlled by the individual and appropriate staff.
- ▶ Individuals must be allowed to furnish and decorate their own sleeping and living areas, to have access to food at any time, and to have visitors of their choosing at any time.
- ▶ Individuals sharing a living unit must have choice of roommate.

CMS Rule (Cont.)

What this means for non-residential services (not a complete list):

- Informed choice of MEANINGFUL activity for period of time determined by the participant
- Interests of participants are the primary focus when establishing schedules
- The setting is located in the community, and facilitates integration
- Tasks and activities are comparable to those who do not receive services
- The setting allows for a mix of service delivery
- The setting offers a location for everyone to securely store their belongings
- All schedules for PT, OT, medications, diet, etc. are kept in a private area, away from general operating areas of the setting

CMS Rule

- ▶ To help you to comply immediately with the Final Rule, please see links below:
- ▶ Final Rule, Detailed Summary
<https://www.medicaid.gov/medicaid/hcbs/downloads/final-rule-slides-01292014.pdf>
- ▶ Residential Settings assessment tool:
<https://www.medicaid.gov/medicaid/hcbs/downloads/exploratory-questions-re-settings-characteristics.pdf>
- ▶ Non-Residential settings assessment tool: <https://www.medicaid.gov/medicaid/hcbs/downloads/exploratory-questions-non-residential.pdf>
- ▶ General information about settings that isolate:
<https://www.medicaid.gov/medicaid/hcbs/downloads/settings-that-isolate.pdf>

Resources &
notes

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Some places to find answers

- ▶ Nebraska Administrative Code 404
 - ▶ *for Community Based Services* regulations that are monitored by the DHHS Developmental Disabilities Division “DDD”
- ▶ DHHS Developmental Disabilities Division website
- ▶ Ask other Specialized Community-Based Certified Providers who have years of experience. A helpful resource is the DD Directory on the DDD website.
- ▶ Contact Kate Bolz, Director of the Nebraska Association of Service Providers at: <http://neserviceproviders.org/>

Most importantly

Services must be:

- ▶ Safe
- ▶ Person-centered
- ▶ Habilitative
- ▶ Focused on contributing to an increased quality of life for individuals
- ▶ Well-administered and in compliance with waiver guidelines

Next step

- ▶ Submit a **written** letter of intent of your decision, and send it to:

Division of Developmental Disabilities

Community-Based Services

PO Box 98947

Lincoln NE 68509-8947

Next step

OR

Email your letter of intent to:

DHHS.DDDCommunityBasedServices@Nebraska.gov

Questions?



Pre-Contract & Billing

Maximizing federal funding

- ▶ Mandated by State Law – State Statute §83-1216
- ▶ “All Nebraska residents eligible for funding for specialized services under the Developmental Disabilities Services Act shall apply for and accept any federal Medicaid benefits for which they may be eligible”

Maximizing federal funding

- ▶ Specialized DD providers **must** be Medicaid waiver providers in order for the state to receive federal match monies
 - ▶ See Title 404 NAC 4-003.01 and 471 NAC 2-000

Medicaid provider enrollment

- ▶ After the review and approval of policies and procedures process
- ▶ Before a contract will be issued
- ▶ Via referral to the web portal developed by Medicaid and contracted to Maximus Health Services, Inc.
- ▶ Provide information to Contract Coordinator

Additional pre-contract items

- ▶ Referral information needed by Contract Coordinator:
 - ▶ Services to be provided – specifically, what waiver do these fall under?
 - ▶ Name of agency
 - ▶ Federal Tax ID Number
 - ▶ Zip plus four – can be ascertained at USPS web site:
<https://tools.usps.com/go/ZipLookupAction!input.action>
- ▶ For more information and to receive Medicaid provider bulletins:
http://dhhs.ne.gov/medicaid/Pages/med_providerenrollment.aspx

Additional pre-contract items

- ▶ It is a good idea to move quickly to become a registered provider with Children and Family Services Policy Unit to acquire APS/CPS background checks for employees as this is a requirement under NAC 404 regulations and takes a few weeks to accomplish
- ▶ Must submit a CFS-3 Organization Registration Form
- ▶ http://dhhs.ne.gov/children_family_services/Pages/nea_cr.aspx for more information and instructions

Referral/Contract

- ▶ Contract Coordinator notifies Service Coordination Supervisors statewide when all pre-contract and provider enrollment documentation is received
- ▶ Service Coordination will NOT advocate for your agency, but will list your agency as another option when speaking with individuals and their families/guardians

Referral/Contract

- ▶ Service Coordination will notify Contract Coordinator when an individual chooses your agency as a provider
- ▶ Contract issued effective the date the individual starts services

Contract requirements

- ▶ In addition to complying with statutory and regulatory requirements, the contract includes additional provider requirements such as:
 - ▶ Insurance – certification of insurance required on contract issue date
 - ▶ Worker's Compensation as required by state law
 - ▶ Commercial motor vehicle liability coverage
 - ▶ Professional liability coverage
 - ▶ General liability

Contract Requirements

- ▶ Clarifying information regarding State Statutes or Regulations cited/referenced in 404 NAC:
 - ▶ Criminal History Check – 4-004.03E applies instead of 4-004.03B 1 and 2; contact Contract Coordinator for current list of vendors. Once a contract is issued, criminal history background checks are through DDD's vendor at DDD's cost.
 - ▶ 4-008 5.b. Incident Reporting System - <http://support.therapservices.net>
 - ▶ All providers are required to use Therap for GERs, referrals, and billing.

Contract requirements

- ▶ Reporting, documentation and billing guidelines
- ▶ Contracts are managed by the DDD Contract Coordinator:
Kim McFarland – Kim.mcfarland@Nebraska.gov

Billing Overview

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Billing Guidelines

- ▶ Services and supports delivered as documented in each individual's person centered plan which may also be referred to as: Individual Support Plan (ISP), Individual Program Plan (IPP) or Individual and Family Support Plan (IFSP)
- ▶ Services billed must be provided in accordance with all statutory, regulatory and contract requirements and in accordance with the approved Home and Community Based Services (HCBS) Medicaid waivers.

Billing Guidelines

- ▶ No payments will be made for room and board, start-up costs, cost of provider-controlled property maintenance, upkeep and/or improvement
- ▶ See 30-page Billing Guideline document located on the DHHS-Division of Developmental Disabilities website
http://dhhs.ne.gov/developmental_disabilities/Documents/ServiceProviderGuidance2016.pdf

Claims Processing

- ▶ Providers can only claim for services provided during the period shown on the Service Authorization
- ▶ All billing goes through Therap. Refer to the following link for a video training on the billing process:

<http://www.therapservices.net/nebraska/nebraska-billing-integration-training/>

Questions?



Certification

Becoming and maintaining status as a
Specialized Provider of Community-Based
Services for Individuals with Developmental
Disabilities in the State of Nebraska

Provisional
Certification

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Provisional Certification

- ▶ A 6 month provisional certificate may be issued based on the results of a pre-service review including:
 - ▶ Site visit if applicable
 - ▶ Administrative Interview
 - ▶ Review of plans to implement your policies and procedures and meet the regulatory requirements of NAC 404
- ▶ Be prepared to actively show that you know your P&P, the regulations, and are prepared to implement them

Provisional Certification

- ▶ A written report will be issued to you following the pre-service review to identify any issues that need to be corrected.
- ▶ In some cases, a written plan of improvement will be required to be approved before you can begin offering services.
- ▶ A return visit to evaluate changes may be conducted

Initial
Certification

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Initial Certification

- ▶ Once a provisionally certified provider is engaged in service delivery, an initial certification review will be conducted
- ▶ Will include site visits, observations, interviews with administration, staff, persons receiving services, and examination of documentation
- ▶ Written certification report will be issued to the provider and will require a plan of improvement (POI) be submitted, accepted, and implemented
- ▶ Upon acceptance of an acceptable POI and possibly evidence that emergent issues have been addressed, certification will be issued, normally for a 1 year period
- ▶ The POI will be evaluated for implementation

Things to consider...

- ▶ The reports issued to provider agencies are public documents. This means the public has access and can see reports on your agency.
- ▶ Do not use names in responses and ensure responses are written professionally as you wish to have them reflect on your agency

Things to consider...

- ▶ Citations often come from poorly written policies that do not give staff the guidance for how the agency will operationalize compliance.
- ▶ Documentation is everything! No documentation means no evidence that your agency is maintaining regulatory compliance. Document EVERYTHING!

Things to consider...

- ▶ Citations can also come from complaint reviews. Like certification reviews, a written report is issued to the provider. These are also public documents.
- ▶ The provider agency is held responsible for any actions and services provided by a subcontractor of specialized services for the provider agency.
 - ▶ Examples of subcontractors – EFH, nurse, transportation, behavior specialist, etc.

Citation Components

- ▶ Each citation consists of three parts:
 - ▶ 1. The Title 404 NAC regulation(s) with which the provider is not in compliance
 - ▶ 2. A statement of what part(s) of the regulation the provider is not in compliance with
 - ▶ 3. Evidence for the deficiency

Citation Example - Regulation

Title 404 NAC 4-005.05 Individual Personal Funds and Property:

The provider must develop and implement written policies and procedures to identify and detail the system to be used to protect individual's funds and property. These policies and procedures must include the following:

404 NAC 4-005.05A General Requirements:

The provider must ensure that:

- 2. The provider must not assess the individuals' funds and personal property for damages unless the IPP team reviews, on a case by case basis, whether it is appropriate for the individual to make restitution, the rationale is documented on the IPP, and the individual or legal representative give written informed consent to make restitution for damages;*

Citation Example – Deficiency Statement and Evidence

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For 1 of 5 individuals whose financial services were reviewed (Individual #2), the agency did not ensure written consent was obtained to make restitution for damages.

As documented in Individual #2's Semi-Annual ISP dated April 1, 2015, Individual #2's team discussed him replacing another individual's glasses that he broke. The ISP team approved the replacement and it was reported by this individual's residential manager that verbal consent was obtained prior to obtaining restitution funds and the guardian signed the ISP; however, no specific written consent was obtained.

Continued
Certification

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Recertification

- ▶ You must maintain a current certificate to bill for waiver funded services
- ▶ Certification reviews may encompass multiple days and multiple reviewers
- ▶ The agency is responsible for providing information and documents requested in a timely manner
- ▶ The recertification process is outlined in Chapter 4 of the NAC 404 regulations and may be adjusted based on changes in the CMS final rule, revisions of NAC 404, and other laws and standards

Certification and Maintenance

- ▶ Certifications will be issued for either a one year or two year duration, depending on the results of the certification review and acceptance of an acceptable POI.
- ▶ Maintaining certification requires maintaining compliance with the regulations and fully implementing all plans of improvement (POIs) accepted by the Department for citations.

Certification and Maintenance

- ▶ To be recertified, the provider is **REQUIRED** to submit an application for recertification 90 days prior to the expiration of their current certification.
- ▶ The Department is not required to prompt the provider to submit the application.
- ▶ Citations issued from complaint investigations can and have been considered in determining certification status.



What does it mean to be in compliance?

- ❖ To be considered to be “in compliance”, you must comply with all regulations, laws and state statutes as applicable to the service and/or setting
- ❖ This may include local zoning laws, fire marshal requirements, etc.

Common Problems for New Providers

- ▶ Are you fully prepared to manage staff and a business BEFORE you begin?
 - ▶ 4-004 (Staff Requirements) including E-verify and APS/CPS registry & background checks **completed & documented**, not just submitted or in process. You must register with CFS before you can be authorized to complete some of these checks.
 - ▶ External requirements for businesses like IRS guidelines, payroll & HR systems. You need to research and meet requirements that are not part of the contract or 404.
 - ▶ 4-004.07 and .08 which include direction to comply with NAC 172 95, 96, & 99 for medication aides. Ensure you have a written agreement in place for monitoring medication aides and medication aides are current on their certification. **You** are held responsible for their work.
 - ▶ Read the regulations carefully; example “**persons**” is plural

Questions?



Helpful contacts

- ▶ DD toll free # 877.667.6266
- ▶ DD Reception # 402.471.8501
- ▶ Community-Based Services email:
DHHS.DDDCommunityBasedServices@Nebraska.gov
- ▶ DHHS website